

**JUNE 16, 2009**

KAREN S. MITCHELL

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

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JOHNNY BIRDOW, JR., PRO SE, §  
Previous TDCJ-CID # 634592 §  
Previous TDCJ-CID # 596194 §

Plaintiff, §  
§

v. § 2:08-CV-0044  
§

JOE GRIMES, JASON A. MOELLER, §  
GERONICA MARTINEZ, §  
K. MARTINEZ, and §  
NFN BLACKERBY, §  
§

Defendants. §  
§

**ORDER OF DISMISSAL**

Plaintiff JOHNNY BIRDOW, JR., acting pro se and while a prisoner confined in the Texas Department of Criminal Justice, Institutional Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-referenced defendants and was granted permission to proceed *in forma pauperis*.

On May 21, 2009, a Report and Recommendation was issued by the United States Magistrate Judge recommending dismissal of the instant cause with prejudice as frivolous and without prejudice for failure to state a claim on which relief can be granted.

The period for objections has expired, and no further pleadings or correspondence have been received from plaintiff in this cause.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation. The Court is of the opinion that

the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by plaintiff JOHNNY BIRDOW, JR., is DISMISSED WITH PREJUDICE AS FRIVOLOUS AND WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

All pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, TX 78711; and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

SIGNED AND ENTERED this 16<sup>th</sup> day of June, 2009.

/s/ Mary Lou Robinson  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE